Supreme Court, U.S.
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No. 05-1322

In The

Supreme Court of the United States

ADAM PALINSKI,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the prosecution's failure to disclose the lead investigator's report it possessed which detailed petitioner's false confession to an unrelated offense a violation of the petitioner's due process rights when petitioner claimed his confession was false in case at bar?

2. Did the trial court abuse its discretion in violation of the petitioner's due process rights when it allowed the prosecution to use detailed testimony about the underlying facts of petitioner's arson conviction at his trial for solicitation of murder?

3. Does presentation of detailed factual testimony of an alleged aggravated battery at petitioner's sentencing for arson and solicitation of murder violate petitioner's Fifth Amendment rights prohibiting double jeopardy when the court states the evidence was used to enhance the penalty imposed and future sentencing would be consecutive?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Adam Palinski prays that a Writ of Certiorari issue to review the judgment of the Illinois Appellate Court, Second District, affirming his convictions for arson, aggravated arson, solicitation for murder and remanding for trial of the charge of aggravated battery.

OPINIONS BELOW

The Illinois Appellate Court, Second District's order affirming the petitioner's conviction is unpublished and attached hereto in Appendix A. The order of the Illinois Supreme Court denying the petitioner's petition for leave to appeal is unpublished and attached hereto as Appendix B.

JURISDICTION

The Illinois Appellate Court, Second District, affirmed the convictions and sentences of the petitioner on charges of arson, aggravated arson and solicitation for murder and remanded the aggravated battery charge for trial on October 21, 2005. Petitioner filed a timely petition for leave to appeal to the Illinois Supreme Court on November 25, 2005 which was denied on January 25, 2006. This petition is timely, having been filed within ninety days of the Illinois Supreme Court's order denying leave to appeal to that court. Jurisdiction is conferred by 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment of the United States Constitution states in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property without due process of law.

STATUTES INVOLVED

Illinois Compiled Statutes Ch. 730 § 5/5-8-4 provides in pertinent part:

> (h) If a person charged with a felony commits a separate felony while on pre-trial release or in pretrial detention in a county jail facility or county detention facility, the sentences imposed upon conviction of these felonies shall be

served consecutively regardless of the order in which the judgments of conviction are entered.

STATEMENT OF THE CASE

1. Petitioner Adam Palinski was charged by indictment with arson and aggravated arson on April 9, 2002. The indictments allege petitioner set fires on the night of March 18, 2002 which damaged St. Michael's Catholic Church and the home of Barry Brennan, both located in Wheaton, Illinois.

Prior to trial petitioner moved to supress his confession. On October 15, 2003 the motion was denied. I Supp.R. 638.[1]

Petitioner properly disclosed Dr. James Corcoran as an expert witness. Dr. Corcoran would have testified about his diagnosis of petitioner's narcissictic personality disorder and offer the opinion that this condition leads petitioner to engage in grandiose lies about himself and his accomplishments. The trial court granted the prosecution's motion in limine to exclude Dr. Corcoran's testimony. I Supp.R. 242.

[1] This appeal is a consolidation of three lower court cases against petitioner: Circuit Court number 02 CF 833 – Arson, Aggravated Arson and Residential Arson; Circuit Court number 02 CF 2346 – Solicitation to Commit Murder for Hire; and Circuit Court number 02 CF 3690 – Aggravated Battery. For reference to the various transcripts pages, the Arson records are referred to as I Supp.R., the Solicitation records will be referred to as II Supp.R. and the Aggravated Battery records will be referred to as III Supp.R.

The case proceeded to jury trial. No direct evidence linked petitioner to the crimes. The most incriminating evidence against petitioner, and the center of the prosecution's case in chief and argument, were petitioner's statements to Detective William Cooley of the Wheaton, Illinois Police Department. Detective Cooley led the investigation of the fires.

Detective Cooley testified he first had contact with petitioner at the Wheaton Police Station at about 11:30 a.m. on March 21, 2002. I Supp.R. 868. Cooley testified he and Detective Wayne Simpson conducted an interrogation of the petitioner which began with biographical questions and reading of *Miranda* rights. I Supp.R. 514-20.

Cooley stated he had an initial two and one-half hour conversation with petitioner. I Supp.R. 521-2. Cooley described petitioner's demeanor during the entire interrogation as cooperative, relaxed and communicative. I Supp.R. 522. During this time petitioner denied involvement in the arsons until he was confronted with a conflict in his account of his whereabouts on the evening of the fires. I Supp.R. 877-8. Cooley stated petitioner then admitted to going inside St. Michael's and starting a fire and later starting several fires on the outside of the Brennan house. I Supp.R. 881-90.

Cooley left the room for a short break and upon his return asked petitioner to provide a summary statement; consent was given to video tape the statement. Petitioner gave an approximately twenty-five minute recorded statement. I Supp.R. 524. The statement detailed an account of the evening of March 18, 2002 which specifically implicated petitioner as the sole perpetrator of the arsons.

Cooley described the investigation of the fires which took place over several days before the interview occurred. I Supp.R. 904. Cooley acknowledged on cross examination that the video was a production he led petitioner through created from a list of things the detective wanted to make sure were recorded to "shore things up." I Supp.R. 921. Some of the content came from Cooley's earlier investigation.

Petitioner testified on his own behalf and denied involvement with the fires. I Supp.R. 1110. Petitioner asserted the interrogation continued despite his denials until he agreed to recite on video a made-up story about setting the fires. I Supp.R. 1115-6. Palinski admitted the video accurately depicted what he said at the end of his interrogation but denied it accurately depicted the whole interrogation or the truth regarding the events of March 18, 2002. I Supp.R. 1118.

At the time of his arrest petitioner was studying film making and acting in college. I Supp.R. 1119. He described his gift for fiction and how it often spilled over into his life as lies he told about himself. I Supp.R. 1121. He explained he had been diagnosed with narcissistic personality disorder which led him to engage in grandiose exaggerations about himself as well as including himself in events he was not a part of. I Supp.R. 1124.

All other evidence at trial is summarized in the appellate court ruling. App.A. On November 6, 2003 a guilty verdict on all counts was returned by the jury. I Supp.R. 273.

During preparation for petitioner's trial on the charge of solicitation of murder counsel requested a supplemental report. The document had been referenced in a prosecution

disclosure but not disclosed. The request was made November 13, 2003 and the prosecution disclosed the report that day.

The report memorialized an interrogation of the petitioner which occurred on August 16, 2002 in the DuPage County Jail while he was in custody for the arson cases. It was conducted by Detective Garlish of the DuPage County, Illinois, Sheriff's Department. A source in the jail had tipped the detective that petitioner was claiming responsibility for the murder of John Conrad. The intent of the interrogation was to determine if petitioner had been involved. I Supp.R. 293-8; II Supp.R. 98. Detective Cooley was present for the interrogation.

During the interview petitioner confessed to the murder. It was immediately determined that he was lying because he misstated the basic facts of the murder and identified an individual in a picture as being the deceased who was not. When confronted with the inaccuracies petitioner told the investigators he confessed because "he thought that was what (they) wanted to hear." He confided that the statements he previously made in the jail implicating himself in the murder had been made in order to make himself "look cool." I Supp.R. 293-8; II Supp.R. 98.

On November 17, 2003 petitioner filed an emergency motion seeking a new trial. As it was central to his defense that the confession to committing the arsons was false he argued the prosecution's failure to disclose the report was the withholding of favorable and relevant material and that the inability to use the information produced a verdict unworthy of confidence. Specifically he contended the report would allow further pursuit of a psychological